

ADVISORY OPINION 95-010

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

May 15, 1995

Patton/Henry for Kentucky Campaign
Mr. George H. Helton, Treasurer
226 West Main Street
Frankfort, Kentucky 40601

Dear Mr. Helton:

This is in response to your April 23, 1995, letter requesting an advisory opinion regarding whether your campaign may refund a political contribution in the amount of \$10.00 to an individual who has requested that her contribution be returned because of a disagreement with a position taken by the Patton/Henry slate. The contribution was received by the slate as a qualifying contribution and received matching dollars from the Election Campaign Fund.

A contribution is defined by KRS 121A.010(11) as a "[p]ayment, distribution, loan, deposit, or gift of money or other thing of value, to a slate of candidates..." KRS 121A.010(4) defines a "qualifying contribution" for public financing as a "contribution made to a slate of candidates for Governor and Lieutenant Governor by a natural person...that is authorized to contribute to candidates that is paid by personal check, cashier's check, or money order." However, there is no provision in KRS Chapters 121 or 121A which relates to or establishes a procedure for refund of qualifying contributions.

A contribution to a campaign is an "inter vivos" or living gift which is defined as the transfer of personal property made voluntarily and without consideration. 38 Am.Jur.2d Gifts § 1 (1968). A gift is complete and irrevocable if the following elements are met: 1) the donor has donative intent; 2) the gift is delivered to the donee; and 3) the gift is accepted by the donee. York's Ancillary Adm'r v. Bromley, Ky., 151 S.W.2d 32 (1941). The contribution in question appears to meet the criteria in York including intent, delivery, and acceptance, and thus, became irrevocable upon deposit to the Patton/Henry campaign account. Therefore, the Patton/Henry slate is not required to refund the contribution.

However, if your campaign voluntarily refunds the ten dollar (\$10.00) contribution to the contributor, we would advise you to also refund the Election Campaign Fund for the matching funds received pursuant to KRS 121A.080. As the deadline for receiving contributions has passed, the campaign may not receive another contribution to replace a contribution which was voluntarily refunded.

Also, the refund may not be classified as an "allowable campaign expenditure" which includes "reimbursement for actual expenses, made directly and primarily in support of or opposition to a candidate, constitutional amendment, or public question which will appear on the ballot" as it is not an actual expense for services to the campaign, and, thus, not an "allowable campaign expenditure"

pursuant to KRS 121.175. Rather, the refund should be listed as a disbursement on the slate's election finance statement.

Sincerely,

Rosemary F. Center
General Counsel

RFC/db